



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

September 13, 2000

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Re: NMFS Finding that the U.S. Forest Service and Bureau of Land Management Existing
Environmental Review Procedures for Federal Actions Meet EFH Consultation Requirements

Dear Regional Foresters and State Directors:

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 et seq.) require the identification of Essential Fish Habitat (EFH)¹ for Federally managed fishery species and the implementation of measures to conserve and enhance this habitat as described in Federal fishery management plans (FMPs). For the Pacific West Coast (excluding Alaska), Federal fisheries are managed by the Pacific Fishery Management Council under three Fishery Management Plans (FMPs). These FMPs are: the Pacific Coast Groundfish Fishery Management Plan (82 species), the Coastal Pelagic Species Fishery Management Plan, (5 species) and the Pacific Coast Salmon Plan (3 species – chinook, coho, and Puget Sound pink salmon).

There are four components of an EFH consultation:

¹“Essential fish habitat means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity”. (Magnuson-Stevens Act, section 3)

1. **Notification** – the Federal agency provides notification of an activity that “may adversely affect” EFH to NMFS;
2. **EFH Assessment** – the Federal agency provides a description of the proposed action, an analysis of effects, and effect determination to NMFS;
3. **Conservation Recommendations** – NMFS involves the Federal agency in development of advisory EFH conservation recommendations and provides them to the Federal agency; and,
4. **Federal Agency Response** – the Federal agency provides written response to NMFS within 30 days after receiving NMFS’ conservation recommendations.

According to EFH regulations, 50 CFR section 600.920(a)(1), EFH consultations are not required for completed actions, such as approved Land and Resource Management Plans (LRMPs) or project-specific actions with a signed decision under the National Environmental Policy Act. However, EFH consultations are required for renewals, reviews, or substantial revisions.

The EFH regulations under 50 CFR 600.920 enable Federal agencies to use existing consultation or environmental review procedures to satisfy the EFH consultation requirements under the MSA, if the existing procedures meet the following criteria:

- the existing process must provide NMFS with timely notification of actions that may adversely affect EFH;
- notification must include an assessment of the impacts of the proposed action on EFH that meets the requirements for EFH assessments discussed in 50 CFR 600.920(g); and,
- NMFS must have made a “finding” pursuant to 50 CFR 600.920(e)(3) that the existing process satisfies the requirements of section 305(b)(2) of the MSA.

To facilitate performance of these consultations without developing an additional administrative process, a “finding” that the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) can use existing environmental review processes to fulfill EFH consultation requirements was jointly developed with interagency staff. The attached “finding” outlines the general procedure for interagency staff to accommodate EFH consultations within existing environmental review procedures of the National Environmental Policy Act and Section 7 of the Endangered Species Act according to the July 1999 Interagency Streamlining Memorandum of Understanding. The Northwest Region of NMFS will provide detailed guidance on integrating EFH and ESA consultations under separate cover. Please note the following areas of where EFH and ESA differ in their scope and requirements:

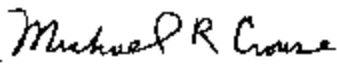
- EFH consultations are required for non-listed, federally-managed fishery species which include: chinook salmon from Washington and Oregon coastal basins as well as several populations in the middle and upper Columbia River basins and the Clearwater River basin; coho salmon populations from Columbia River, Washington coast, and Puget Sound basins; and Puget Sound pink salmon.

- Under section 305(b)(4)(B) of the MSA, the Federal agencies must provide a written response to NMFS within 30 days after receiving the NMFS' EFH conservation recommendations.

In order to conduct EFH consultations in conjunction with the existing environmental review processes referred to above, please respond by letter indicating your concurrence with the attached "finding". You may want to transmit this letter to your Forest Supervisors or District Managers who are responsible for implementing land management actions in these geographic areas, as well as to your Level 1 team members.

Should you have any questions on this matter, please contact the Northwest Regional EFH Coordinator, Ms. Nora Berwick at (503) 231-6887.

Sincerely,


For: William Stelle, Jr.
Regional Administrator

2 Attachments:

1 - NMFS Finding that the United States Forest Service and Bureau of Land Management Existing Environmental Review Procedures for Federal Actions Meet EFH Consultation Requirements

2 - Interim Final Rule to Implement the Essential Fish Habitat Provisions of the Magnuson-Stevens Act (50 CFR Part 600, December 1997)

cc: Gordon Haugen, USFS, Portland, Oregon
Cindy Swanson, USFS, Missoula, Montana, Region 1
Bill Burbridge, USFS, Ogden, Utah, Region 4
Ron Escano, USFS, Portland, Oregon, Region 6
Laura Ceperley, BLM, Oregon
Dave Brunner, BLM, Idaho
Lew Brown, BLM, Idaho

NMFS FINDING THAT THE U. S. FOREST SERVICE AND BUREAU OF LAND
MANAGEMENT EXISTING ENVIRONMENTAL REVIEW PROCEDURES FOR FEDERAL
ACTIONS MEET EFH CONSULTATION REQUIREMENTS

Finding

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires Federal action agencies to consult with the Secretary of Commerce regarding any action or proposed action authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH) identified under the MSA. According to EFH regulations, 50 CFR section 600.920(a)(1), EFH consultations are not required for completed actions, such as approved Land and Resource Management Plans (LRMPs) or project-specific actions with a signed decision under the National Environmental Policy Act. However, EFH consultations are required for renewals, reviews, or substantial revisions.

The EFH regulations at 50 CFR section 600.920(e)(1)(i) enable Federal agencies to use existing consultation/environmental review procedures to satisfy EFH consultation requirements if they meet the following criteria: 1) The existing process must provide NMFS with timely notification of actions that may adversely affect EFH; 2) notification must include an assessment of impacts of the proposed action as discussed in section 600.920(g); and 3) NMFS must have made a “finding” pursuant to section 600.920(e)(3) that the existing process satisfies the requirements of section 305(b)(2) of the MSA.

NMFS finds that the existing National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) environmental review processes, including the Interagency Streamlined Consultation Procedures for Section 7 of the Endangered Species Act (July 1999), used by the USFS and the BLM for Federal activities can be used to satisfy the EFH consultation requirements of the MSA provided that NMFS, along with the USFS and the BLM, adhere to the following steps:

1. Timely Notification

The existing NEPA and ESA environmental review processes must provide NMFS with timely notification of actions that may adversely affect EFH. The USFS and the BLM should notify NMFS according to the same timeframes for notification (or for public comment) as in the existing processes referred to above, including the preparation of environmental/biological assessments and impact statements. Wherever possible, NMFS should have at least 60 days notice prior to a final decision on an action, or at least 90 days if the action would result in substantial adverse impacts. NMFS and

the action agencies may agree to use shorter timeframes, as appropriate, provided that the action

agencies allow sufficient time for NMFS to develop EFH conservation recommendations (50 CFR section 600.920[e][1][i]).

Notification must include an assessment of the adverse impacts of the proposed action on EFH that meets the requirements for EFH assessments contained below. If the EFH assessment is contained in another document, that document must be clearly identified as the EFH assessment (50 CFR section 600.920[e][ii]).

2. EFH Assessment

The USFS and the BLM may incorporate an EFH assessment into, for example, ESA biological assessments pursuant to 50 CFR section 402, or NEPA documents and public notices pursuant to 40 CFR section 1500. NEPA and ESA documents prepared by the USFS and the BLM should contain sufficient information to satisfy the requirements in 50 CFR 600.920(g) for EFH assessments and must be clearly identified as an EFH assessment. Mandatory contents of an EFH assessment are: 1) A description of the proposed action; 2) an analysis of individual and cumulative adverse effects of the action on EFH, the managed species, including affected life history stages, and associated species such as major prey species; 3) a determination of effects on EFH; and 4) a discussion of proposed mitigation, if applicable. Additional information which may be appropriate to include in an EFH assessment is listed in 50 CFR 600.920(g)(3).

The level of detail in the EFH assessment should be commensurate with the complexity and magnitude of the potential adverse effects of the action on EFH. For example, for relatively simple actions involving minor adverse effects on EFH, the assessment may be brief. Actions that pose a more serious threat to EFH warrant a correspondingly more detailed EFH assessment.

Formal notification of potential adverse impacts on EFH will adhere to the existing environmental processes described in this “finding”. Adverse impacts on EFH will be addressed in the documents in a section or chapter titled “EFH”, or by reference to companion documents. The EFH discussion may reference pertinent information on the affected environment and environmental consequences where they are provided in other sections, chapters, or companion documents. The information must be easily found, and should include both an identification of affected EFH and an assessment of impacts.

An EFH assessment may incorporate information by reference to another EFH assessment prepared for a similar action, supplemented with any relevant new project specific information, provided that the proposed action involves similar impacts to EFH in the same geographic area or a similar ecological setting, and provided that a copy of the prior EFH assessment is attached to facilitate review by NMFS. An EFH assessment may also incorporate by reference other relevant environmental assessment documents. These documents must be provided to NMFS with the EFH assessment (50 CFR 600.920[g][4]).

3. NMFS EFH Conservation Recommendations

Upon review of the EFH assessment, NMFS may develop EFH conservation recommendations. The comment deadline for the existing environmental review process being used to fulfill the EFH consultation requirements applies to the submittal of NMFS' conservation recommendations under section 305 (b)(4)(A) of the Magnuson-Stevens Act, unless a different deadline is agreed to by NMFS and the action agencies (50 CFR section 600.920[e][2]). In all cases, NMFS will provide its recommendations within the regular comment period of the existing environmental review process being used to satisfy the EFH consultation requirement.

4. The USFS/BLM Response

Under section 305(b)(4)(B) of the MSA, the action agencies must provide a written response to NMFS within 30 days after receiving the NMFS EFH conservation recommendations. If the action agencies are not able to respond fully within 30 days, the action agencies must send a preliminary response within this time period stating receipt of NMFS recommendations, will consider them fully, has not yet made a decision on the project, but will respond to NMFS recommendations in detail as soon as possible. The action agency response should be provided to NMFS at least 10 days before the action agency makes a final decision, to allow time for dispute resolution if necessary.

The USFS/BLM response must include a description of measures proposed by the USFS and/or BLM for avoiding, mitigating, or offsetting the impact of the activity on EFH, as required by section 305(b)(4)(B) of the MSA and 50 CFR 600.920(j). In the case of a response that is inconsistent with NMFS EFH conservation recommendations, the action agencies must explain their reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action or the measures needed to avoid, minimize, mitigate, or offset such effects.

To promote efficiency, the action agencies may respond to NMFS EFH conservation recommendations in a single letter that discusses numerous projects. For example, the action agencies may wish to send NMFS one response monthly that covers all EFH conservation recommendations provided during the preceding 30 days.

5. Dispute Resolution

If the USFS/BLM decision is inconsistent with NMFS EFH conservation recommendations, 50 CFR 600.920(j)(2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with the the USFS Chief and/or the BLM Director to discuss the proposed action and opportunities for resolving any disagreements. NMFS will first endeavor to resolve any such issues at the field level wherever possible, using the interagency streamlining procedures involving Level 1 and Level 2 teams.